Internet backbone provider because customers interested in multihoming will likely buy their second connections from the dominant network.[211] Customers, however, would search actively for ways to decrease reliance on an Internet backbone provider whose customers repeatedly experienced substandard service on a significant portion of their traffic. The flexible structure of the Internet and the ease of establishing new and expanded connections give customers opportunities to minimize use of the larger backbone provider, thereby making its strategy unprofitable and ineffective. Customers of Internet backbone services have a large and growing number of competing Internet backbone providers from which to choose.[212]

Like peering, multihoming is enabled by the use of BGP4 routing. Contrary to commenters assertions that multihoming is "not common practice, is neither easy nor cheap and is insufficient to mitigate MCI WorldCom's dominance,"[213] the rate of increase in the use of multihoming has grown in the last year or so as a result of reductions in the cost of using BGP4 and reductions in the price of private line and fast packet services (such as Frame Relay). Data obtained from Boardwatch Magazine indicate that the frequency of multihoming has increased among ISPs that purchase transit services from the major backbones. Table 2 shows that for 1997 and 1998 additional (i.e. second or subsequent) connections purchased by multihomed ISPs as a share of all connections was approximately 24%. The number rose to about 43% in 1999 following the dramatic reduction in overall cost of supporting multihomed connections.

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211 GTE at 11; see also Pearce Aff. at 20.

212 See discussion at Section V.B., above.

213 Pearce Aff. at 20, 26.

Additional Backbone Connections Held by Multihoming ISP's			
Year	# ISPs	Number of Backbone Connections Sold to ISPs	Share of Additional Connections Sold to Multihoming ISPs
1997	4,354	5,739	24%
1998	4,470	5,913	24%
1999	5,078	8,950	43%
Sources: Boardwatch Magazine's Directory of Internet Service Providers, Fall 1997, p. 6. Boardwatch Magazine's Directory of Internet Service Providers, Winter 1998, p. 5. Boardwatch Magazine's Directory of Internet Service Providers, 11th Edition, 1999, p. 4.			

Many multihomed ISPs purchase connections to multiple backbones, often with the intention of routing traffic around congested peering points. For example, InterNAP obtains connectivity from nine separate backbone providers, and routes traffic to the backbone provider that offers the best connection to the destination, automatically bypassing any congested peering points.[214]

Operators of popular web sites on the Internet also commonly use multihoming. For example, "the Excite Web site connects to multiple ISPs' points of presence (POPs) via Cisco 7500s and Cisco 12000 series Gigabit Switch Routers (GSRs)."[215] According to the Data Communications Magazine study cited by AT&T,[216] the top 25 ISPs sell at least 669 Internet connections to the 500 busiest web sites. Although the web sites may buy connections from ISPs not included in the Data Communications list of top 25 ISPs, and the technique used to identify the ISPs may not have been exhaustive, these data indicate that at least 25% (i.e. 169/669) of all connections were additional connections sold to multihomed web servers.

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214 <www.internap.net/how.htm>.

215 <www.cisco.com/warp/public/784/packet/july99/3.html>.

216 See AT&T at 7 (citing Data Communications, David Greenfield, "Top 25 ISPs" (June 1999), <www.data.com/issue/990607/topisps.html>).

Multihoming by individual web sites has the same qualitative effect as multihoming by an ISP. The effects of both types of multihoming are to make customers more likely to shift traffic away from a backbone operator that tries to increase price or degrade quality.[217] Equally important, by reducing dependence on any single backbone provider, the practice of multihoming increases the risk associated with a degradation strategy because of the relative ease for the multihomed customer to shift traffic to another provider. As long as multihoming is available, it does not matter whether customers actually use it.

c. Distributed storage services.

Despite commenters claims to the contrary,[218] distributed storage services represent another development that reduces any incentives that may exist for a large Internet backbone provider to degrade a peering interface. By storing website content locally, an ISP can reduce the response time experienced by its users and also reduce its costs for transporting information from its original location to subscribers requesting the information. Caching, mirroring, and other intelligent approaches to the local or distributed storage of web pages have therefore become increasingly popular. Although there are significant differences in implementation among caching, mirroring, and intelligent content distribution services, all share an important characteristic -- they all reduce the proportion of all Internet traffic that must traverse peering interfaces.[219]

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217 Economides Decl. ¶¶ 51-53.

218 AT&T at 10; Pearce Aff. at 19; GTE at 11.

219 At present, each of these services -- caching, mirroring and content distribution -- are most effective when the website content does not need to be updated on a frequent basis. Moreover, these services can likely be used for a substantial majority of a typical ISP's traffic even though the use of these services is presently limited to website traffic rather than other Internet traffic, such as email, Telnet and network administration. According to

Caching refers to the practice of locally storing information requested by a Web user. Browsers cache downloaded web pages on the user's computer for later use by the user. ISPs use caching to store a web page on the ISP's proxy server when a subscriber first downloads it. Subsequent requests for the cached page are served from the proxy server. Thus, caches can reduce the need to transport the same material across the Internet repeatedly.

A *mirror site* is defined to be "a replica of an already existing site, used to reduce network traffic (hits on a server) or improve the availability of the original site."[220] Since a mirror site is intended to be an exact replica of the original server, information on a properly functioning mirror site should never be stale, although this may not always be achieved in practice.

Since the WorldCom/MCI merger, more sophisticated information distribution technologies, referred to as Content Distribution Services (CDS) or Content Distribution Networks, have been developed and commercially deployed. Firms that provide distributed storage services include Adero, Akamai, iBEAM, Inktomi and Cidera. Clients that seek to provide information to end users locate some of their information on a CDS provider's servers, and the CDS provider assumes responsibility for maintaining the system.[221] When an end user accesses information from the CDS provider client's web server, a large fraction of the requested information is supplied, when possible, from the CDS provider server.

The degradation theory assumes that when an end user served by one Internet backbone

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one source, approximately 70 percent of a typical ISP's traffic is web-based. The Internet Protocol Journal, Geoff Huston, "Web Caching" (Sept. 1999).

220 <aol.pcwebopedia.com/TERM/m/mirror_site.html>.

221 See, e.g., <www.akamai.com/service/howitworks.html>.

provider accesses information on a web server connected to another Internet backbone provider, the request for information must traverse the peering interface between the two Internet backbone providers, and the information that is returned in response to the request will traverse the same peering interface. Distributed storage services, such as caching, mirroring and CDS, create an alternative path for some information requests and responses that would otherwise traverse a peering interface.

While the first request for the information might require that the page be transported over a peering interface, subsequent requests can be met from the local cache and avoid traversing a degraded peering interface.[222] The volume of the diverted traffic is the same for all subscribers on both sides of the interface. The distributed storage arrangement, however, would limit the extent to which the smaller backbone provider experiences low service quality on a higher proportion of its traffic than the large provider as a result of degradation. Therefore, any incentive that a larger Internet backbone provider may have to degrade the peering interface is reduced. Several reports suggest that the reduction in traffic can be significant.[223] Moreover, distributed storage

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222 The ISP must determine how frequently to update its cache, whether hourly, daily, weekly, etc.

223 The Internet Protocol Journal, Geoff Huston, Telstra, "Web Caching" (Sept. 1999) ("If the cache performed at even 60 percent of a theoretical maximum caching performance, the ISP could reduce its external traffic volume requirements by some 13 percent."); Inktomi Corporation, 2000, "Large Scale Network Caches Provide More Bandwidth for your Money," ("For ISPs, caching means a significant decrease in the amount of traffic traversing network backbones. Reducing Internet traffic directly reduces the cost of bandwidth. Estimates indicate that ISPs can expect to reduce Internet traffic by as much as 50%."); Inktomi Corporation, 2000, "Large Scale Network Caches Provide More Bandwidth for your Money," ("Traffic patterns are another stumbling block in optimizing network design. For instance, most Web content is still centralized at a single origin server. Each user's request for information has to (1) travel across the long-haul Internet, (2) be serviced by a potentially congested origin server, and then (3) return back across the same expensive backbone. This creates as much as 80% redundant traffic over the Internet. ... Depending on the distribution of traffic and the scalability of the cache, up to 80% of user requests can be taken off the network and served from the cache.").

technology enhances the ability of customers to evaluate their Internet backbone providers' performance and to identify causes of service degradation. This, in turn, empowers customers to be an even more powerful counterweight against attempts to engage in degradation.

Trade press reports indicate that the costs of deploying caching technology have fallen[224] and that the benefits of caching have been realized in commercial deployments: "We have hit rates of anywhere from 40 to 60 percent off of our caching device," according to the information technology director of one ISP. "At those rates, there's no question that the benefits outweigh the cost."[225] Consequently, the use of caching has grown significantly in 1999 and is predicted to grow rapidly over the next few years.[226]

One commenter speculates that reliance on the existence of caching implies that the demand for Internet backbone access may now, or will soon, exceed capacity.[227] In this view, distributed storage services are not a substitute for access to Internet backbone services. Rather,

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224 ISP-Planet, Jim Thompson, "Caching: How Real the Benefits?" (Nov. 15, 1999) ("Caching is no longer an expensive solution," said Gibbs who notes that a number of low-cost caches are now available. "CacheFlow and InfoLibria, for example, have affordable 'pizza box' solutions that are designed for T-1 or dual T-1 clients. Some sell for under $10,000, some are under $5,000, but all provide significant benefits.").

225 Id.

226 ISP-Planet Staff, "Caching Market Becomes Big Business" (Aug. 19, 1999) ("The demand for Internet caching will continue to soar over the next five years, as total investments since the market's inception near $675 million, according to a report by the Internet Research Group. According to "The 1999 Internet Caching Report," the total size of the caching market for 1999 is projected to be $287 million, rising to nearly $2.2 billion in 2003. The report also found the roster of caching vendors has more than doubled in the past year, rising from 13 to 27. ... "1999 is the year that Internet caching grew into a full-sized market," said Peter Christy, VP of Internet Research Group."); see also <www.cacheflow.com/about> ("Explosive growth is forecasted for the caching appliance market, with revenues projected to exceed $3 billion by 2003 (source: The Gartner Group))."

227 NEXTLINK at 8.

they reduce the distance packets must travel and decrease traffic at peering interfaces and, thereby, deliver the desired information to the requesting customer more efficiently. The commenters miss the point that an ISP's motivation for deploying distributed storage service is irrelevant. Regardless of the reasons for deploying these services, the impact of the deployment is to reduce the amount of traffic that crosses degraded peering interfaces.

Another party claims that as content becomes more dynamic in nature, generic caching will become less effective.[228] It is true that caching is particularly effective in defeating the degradation strategy in cases in which the website content is not updated on a regular or even constant basis.[229] This criticism ignores the fact that caching developed as a means of delivering certain kinds of information to customers more efficiently than routing all requests to a home web site. As web sites continue to evolve technologically, there is no reason to assume that content storage technology will not also evolve.

In sum, developments that have occurred since the WorldCom/MCI merger permit ISPs to route an increasing proportion of Internet traffic around peering interfaces between Internet backbone providers. These developments, which include increased and lower-cost peering among smaller ISPs, multihoming, and distributed storage services, reduce the effect on end users of a degraded peering interface between two Internet backbone providers by diverting traffic to alternative higher quality interconnection links. This increases the amount of business an ISP

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228 AT&T at 10.

229 In addition, due to the fact that a smaller number of customer requests traverse the peering interface, performance from the customer standpoint is unaffected if it takes a little longer to update, on an occasional basis, the information that is cached.

would lose in response to an increase in price or degradation of interconnection.[230] Thus, the emergence of these services undermines any alleged incentive for a backbone provider to initiate a degradation strategy, as asserted by SBC and other commenters.

These technological developments, of course, are also completely consistent with the view that the Internet is a non-hierarchical, network of networks that no single ISP could dominate under any plausible circumstances. From this perspective, peering, multihoming and distributed content services are natural products of ongoing efforts of large and small ISPs to improve efficiencies in traffic exchanges and to provide redundancy as a protection against unintended service degradation and disruptions and to increase the quality of service to their customers.[231] Indeed, these developments underscore the premium placed by customers of Internet services on high quality interconnection and demonstrate their willingness to take affirmative steps to maintain service quality.

F. Other Alleged Anticompetitive Effects Will Not Occur.

1. Peering

Some commenters advance a series of unfounded objections to UUNET's peering policies. Bell Atlantic erroneously alleges that UUNET, in the spring of 1997, "ended free peering with all but the largest five or so backbone providers."[232] AT&T contends, erroneously, "MCI WorldCom and Sprint continue to require Internet backbone providers to demonstrate that their networks are roughly the same size as theirs before they will agree to settlements-free private

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230 Economides Decl. ¶¶ 52-54.

231 See Hausman Decl. at 34.

232 Bell Atlantic at 5-6.

peering."[233] As a threshold matter, these issues are not relevant to this proceeding. The Commission stated in the WorldCom/MCI Order that although peering was an issue that warranted monitoring, the "instant merger proceeding is not the appropriate forum to address these concerns."[234] The Commission has continued to monitor peering, and most recently, in the Advanced Services Report, declined once again to take any action with respect to peering.[235]

In any event, the objections raised by these parties are groundless. Bell Atlantic's statement that UUNET ended peering with all but five large ISPs is simply not true. Moreover, in the last two years, the UUNET regional "backbone networks" have entered into peering relationships with 15 additional ISPs, and now peer with 75 additional ISPs globally. Sprint has also entered into additional peering relationships. In an effort to address issues raised by potential peers, UUNET has published its North American Peering Policy, which sets forth clear criteria for peering. Contrary to the claims of Bell Atlantic and AT&T, UUNET's peering policy does not depend on the relative size of the potential peer.[236] Therefore, the commenters' contentions with respect to peering are baseless.

AT&T also argues that MCI WorldCom has not relieved congestion at NAPs it operates.[237] As the attached Declaration of Thomas Bechly (attached as Exhibit 6) ("Bechly Decl.") shows, MCI WorldCom has taken, and continues to take, steps to ensure that congestion

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233 AT&T at 5.

234 WorldCom/MCI Order ¶ 155.

235 Advanced Services Report ¶ 105.

236 <www.us.uu.net/about/press/1997/peering.html>

237 AT&T at 10; Affidavit of Rose Klimovitch on Behalf of AT&T.

does not recur. The congestion was caused by limitations in the shared media of the NAPs, called Fiber Distributed Data Interface (FDDI), which could not scale sufficiently to respond to the explosive growth of the Internet in the mid-1990s. By February 1999, MCI WorldCom had deployed ATM switches at all three of its larger U.S. NAPs.[238] As of December 1999, demand at one of the upgraded NAPs (MAE East) began to exceed capacity, and MCI WorldCom responded immediately by expanding usable capacity and installing additional ATM switches, doubling the total installed capacity.[239]

2. Other allegations

Some parties erroneously contend that the sheer size of the merged company will lead inevitably to reduced competition among Internet backbone service providers, even if their other unfounded predictions that the company will engage in anticompetitive practices prove to be false. These commenters argue that the substantial size of one backbone reduces the value of and demand for rivals' products;[240] the combined company will have a significant competitive advantage because of the direct access it affords to customer and content;[241] and that, at some point, customers will abandon the rival networks because the networks will be perceived as too

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238 Bechly Decl. ¶ 12. The Applicants also wish to correct a statement in the Supplemental Internet Submission regarding the number of NAPs operated by MCI WorldCom in the United States. Supplemental Internet Submission at 8. The MAEs in New York and Chicago have been decommissioned, so that MCI WorldCom now operates 5 (rather than 7) NAPs in the United States. See Bechly Decl. ¶ 5.

239 Bechly Decl. ¶ 12; see also Economides Decl., Table 5, ¶ 65.

240 See, e.g., SBC at 41; C&W at 15-16; GTE at 7; Pearce Aff. at 23, 30; NEXTLINK at 8.

241 C&W at 15.

small to be viable.[242]

This theoretical argument does not withstand serious analysis. The hypothesis assumes that peering connections are not degraded and transit is available at competitive prices, which accurately describes the circumstances today. Under these conditions, there is no inherent advantage to being a customer of a large network. A customer of either a small or a large network would obtain the same service quality for traffic that crosses peering interfaces and the same access to competitively priced transit. Indeed, customers, particularly larger, more sophisticated customers, would find it in their economic interest to ensure that competing providers of backbone services offering equivalent products remain profitable and would also use alternative suppliers for redundancy as a protection against inevitable occasional service interruptions.[243]

Finally, commenters have also argued that market power with respect to the provision of Internet backbone services will deter further entry,[244] enable the combined company to dominate downstream markets for ISP services,[245] and stunt the development of advanced services.[246] All of these arguments assume that the merged firm will have market power over Internet backbone

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242 See, e.g., SBC at 41; C&W at 15; GTE at 7; Pearce Aff. at 23, 30; NEXTLINK at 8.

243 See, e.g., "GTE Internetworking and AOL Expand and Extend Relationship," AOL Corporate Press Releases (Feb. 17, 2000)(AOL will "use GTE Internetworking as a primary provider of nationwide broadband backbone services. . .") <media.web.aol.com/media/press_view.cfm?release_num=15100424&title=GTE%20Internetworking%20and%20AOL>.

244 See, e.g., C&W at 5, 18; Pearce Aff. at 23, GTE at 8.

245 C&W at 5, 19-22; Global Crossing at 6.

246 C&W at 5, 19-22; Pearce Aff. at 24.

services, and as demonstrated above, that premise is wrong. In any event, these arguments about derivative impacts are pure speculation. The commenters do not provide any concrete data or analysis to support these claims.

G. The MCI Divestiture Of Internet Assets Achieved The Commission's Objectives And Demonstrates That An Internet Backbone Business Can Be Successfully Divested.

Providers of Internet backbone services today compete vigorously and will continue to do so after the merger of MCI WorldCom and Sprint. In addition, significant market and other changes that have occurred since the merger of MCI and WorldCom that further undermine claims that the merger will have an adverse effect on competition in the provision of Internet backbone services. Moreover, if policymakers nonetheless were to have concerns about the addition of Sprint's Internet business to MCI WorldCom, the Applicants have committed to work to address and resolve those concerns.

Several parties, however, contend that the Commission should, at a minimum, require divestiture of MCI WorldCom's Internet business as a condition of approving the merger.[247] In particular, these parties allege that even a divestiture of Sprint's Internet backbone assets would not be adequate to address the asserted adverse effects of the merger on competition in the provision of Internet backbone services.[248] These commenters claim that the divestiture of MCI's Internet backbone business to C&W, as required by the FCC as a condition of its approval of the 1998 WorldCom/MCI merger,[249] did not achieve its intended objectives.[250] In support of these

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247 See AT&T at ii, 11-13; Bell Atlantic at 7-8; NEXTLINK at 11-12; SBC at 43-46.

248 AT&T at 11-12; Bell Atlantic at 7-8; GTE at 13-14; NEXTLINK at 12; SBC at 45.

249 WorldCom/MCI Order ¶ 151.

arguments, several of these parties point to allegations that C&W advanced in litigation relating to the MCI transfer of Internet assets. Some parties further contend that any divestiture of Internet assets that are integrated with a firm's other lines of business would result in a reduction of competition among backbone service providers.[251] These contentions do not withstand scrutiny.

As an initial matter, the Commission required that divestiture to ensure that MCI WorldCom would not have a dominant position as a result of the merger. The proof that the divestiture achieved its goals is that Internet backbone services are currently competitive, a point generally conceded by commenters. The available data, together with C&W's own actions and statements, demonstrate that the transfer of MCI's Internet backbone assets to C&W was more than sufficient to accomplish the intended goal because competition to provide Internet backbone services has remained vigorous and effective after the WorldCom/MCI merger. So if the merger presented any problem that needed to be solved, the divestiture plainly worked well enough to solve it, notwithstanding some implementation issues alleged by C&W.

Consistent with the FCC's requirement, the divestiture succeeded in transferring MCI's substantial Internet assets to a competing service provider that has used them to enhance its position as an effective, facilities-based alternative to WorldCom and other major providers of Internet backbone services. The MCI divestiture required the transfer of substantial assets to C&W. These assets included: (1) MCI's domestic Internet facilities, including 22 nodes, 15,000 interconnection ports, more than 40 ongoing peering agreements, and all the routers, switches, and other equipment dedicated to the provision of Internet backbone service; (2) over 3,000

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250 See, e.g., Bell Atlantic at 7.

251 GTE at 13.

dedicated Internet access corporate customers; (3) more than 1,300 ISP customers; (4) a large dial-up Internet access business; and (5) value-added services such as web hosting and managed firewall services.[252]

The sale of this substantial Internet backbone business as a single unit to C&W clearly strengthened considerably C&W's position as one of the world's leading Internet backbone services. Publicly available evidence demonstrates that C&W is an effective, vigorous competitor in the provision of Internet backbone services.[253] Today, there can be no question that C&W currently competes aggressively with MCI WorldCom and other national and regional providers of Internet backbone services.

Although, as discussed in Section C above, it is difficult to assess precisely any company's share of the Internet backbone business, there is a consensus that C&W is one of the top competitors in offering this service. Published, independent estimates of the relative shares of

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252 WorldCom/MCI Order ¶ 151.

253 Some parties claim that C&W's share of the Internet backbone business has dropped "precipitously" since its acquisition of MCI's Internet business. GTE at 12-13; see also SBC at 46; Bell Atlantic at 7-8. The basis for these claims, however, is the same flawed data that underlies the commenters' characterizations of the Internet backbone industry in general. See Section V.C.1. Moreover, whatever variations may have occurred in C&W's Internet business during the transition period that followed its acquisition of iMCI, it is clear that C&W's Internet business is now on firm footing. Although in its comments in this proceeding C&W asserted that it suffered a downward trend during this transition period, it also stated that this trend has stopped. C&W at 40. Indeed, in response to claims in another FCC proceeding that its business has suffered a precipitous drop, C&W stated that it "remains a strong competitor in the Internet backbone market." Reply Comments of C&W, CC Dkt. No. 98-184, at 8-9 (filed Feb. 22, 2000); see also Supplemental Internet Submission, at Attachment 4 (quoting story in Inter@ctive Week, December 6, 1999, at 58, regarding C&W's denial of a report that its ISP connections had shrunk from 1,848 to 569). As set forth below, C&W has moved aggressively to expand this competitive position.

Internet backbone service providers typically list C&W among the top five.[254] Soon after C&W initiated litigation against MCI WorldCom, C&W itself reported to market analysts that the acquisition is providing the volume and revenue growth expectation and that "business is going well."[255] C&W has recently reported robust revenue growth, including a 34% increase in revenues from its data, Internet, IP and other advanced services, and anticipates substantial future growth in these areas as well.[256] Moreover, in January of this year, C&W announced "Enhanced Service Level Agreements" for its Internet backbone customers (SLAs) that promise "the industry's highest guarantees" for superior network performance.[257] This last measure amply demonstrates C&W's confidence in the quality of its MCI-divested backbone business.

C&W's position today as a provider of Internet backbone services refutes claims by some commenters that any proposal to divest the Internet backbone assets of Sprint to a third party would be ineffective. Some parties go even further, arguing that the Commission should require

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254 See Supplemental Internet Submission, Attachments 1-5. One even lists C&W as the world's largest Internet service provider, measured in terms of the percentage of downstream ISPs served by a particular backbone. TeleGeography 1999, "The World's Top ISPs," at 122 (Figure 9) (<www.telegeography.com>).

255 Cable & Wireless Analysts Conference Call, Thomas McDonald, Robert Lurwill and Graham Wallace, Washington, D.C., May 13, 1999. With respect to the litigation with MCI WorldCom, C&W explained that "[t]his is the normal sort of thing you get when you do a quick acquisition. You invariably have a few disputes about items." C&W further stated that "we'd like a price adjustment just to allow for the fact that we didn't get what we thought we'd get" in terms of customer information and the number of sales people "that we feel we were entitled to."

256 Presentation by Greg Clarke, Chief Executive, C&W (issued Jan. 2000). <www.cwcom.co.uk/investormainpages/reportsframe.html> (select link to "1999 Interim Results -- View the Chief Executive's Presentation").

257 <cw-usa.net/press_01-27-00.htm>.

the divestiture of UUNET as a condition of the approval of the applicants' proposed merger because "Sprint's Internet business is integrated into Sprint's other telecommunications businesses in the same way that iMCI formerly was integrated into MCI's other businesses."[258]

As an initial matter, the applicants have shown that their merger would not pose any competitive harm given the robust competition in the provision of Internet services today. In any event, the relative extent of integration of the UUNET or Sprint Internet businesses with their other lines of business is immaterial.[259] The Commission correctly found that such a divestiture can be done effectively subject to appropriate conditions.[260]

C&W itself acknowledges that the alleged implementation issues do not mean that a company cannot effectively divest an Internet business that is not separate from the divesting company's other lines of business.[261] Now that MCI WorldCom and C&W have settled their commercial dispute, C&W stated that "our experience in reaching a satisfactory settlement of outstanding commercial disputes with MCI WorldCom has led us to believe that the transaction of divesting an integrated business would be possible assuming that the contracting parties

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258 NEXTLINK at 12; see also GTE at 12-13.

259 The Commission clearly should reject claims that MCI WorldCom should be required to divest UUNET as a condition of the agency's approval of the merger. No party has claimed, or could claim, that UUNET should be divested today, in the absence of the proposed merger. As discussed above, a spin-off of other Internet assets could be accomplished successfully if that were necessary to address policymakers' concerns about the merger.

260 See WorldCom/MCI Order ¶152.

261 In any event, allegations are not facts. In MCI WorldCom's view, the evidence shows that it complied fully with all of its contractual obligations in transferring the MCI Internet assets to C&W.

address the transitional issues that arose in the iMCI transaction."[262]

As the MCI divestiture demonstrates and C&W's public statements confirm, it is possible to spin off successfully an integrated Internet business to an independent firm that will use those assets to strengthen and broaden its competitive position. The plain evidence is C&W today is a leading provider of Internet backbone services with a growing worldwide presence and its acquisition of MCI's Internet assets clearly contributed to its success over the past two years. In sum, the record fully supports a finding that the divestiture of MCI's Internet assets ordered by the Commission in connection with the MCI/WorldCom merger accomplished the intended objectives. Challenges to this finding based on allegations advanced in commercial litigation are both irrelevant and contradicted by C&W's position today as a competitive provider of Internet backbone services and its own statements.

VI. The Remaining Issues Raised In The Comments Are Not Appropriate For This Merger Proceeding.

A. Disputes Unrelated To The Merger

Several commenters raise a variety of extraneous issues involving private disputes that do not relate specifically to the question of whether MCI WorldCom should be allowed to acquire control of Sprint. These complaints have no relevance to this merger proceeding, and many are actually being considered in other Commission proceedings or other fora. Entertaining these extraneous concerns would be at best inefficient and at worst would encourage private parties to

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262 Letter from Wharton B. (Zie) Rivers Jr., C&W North America, to Magalie Roman Salas, FCC, CC Dkt. No. 99-333 (dated Mar. 9, 2000).

transform a public interest inquiry into private interest negotiations. They should not be resolved in this context.[263]

The Commission has clearly identified the scope of its public interest inquiry in merger proceedings. It has explained it considers "four overriding questions: (1) whether the transaction would result in a violation of the Communications Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of the Commission's rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act . . . and (4) whether the merger promises to yield affirmative public interest benefits." SBC/Ameritech Order ¶ 48. In each of these four questions, the relevant focus is on the transaction itself and its effects, and not merely a question relating to only one of the merger parties. See Bell Atlantic/NYNEX Mobile Order ¶ 37 (rejecting allegations of misconduct because commenter "has not shown how these acts . . . are either (a) more likely to be repeated after the proposed merger than they were before , or (b) more severe in effect after the proposed merger than they were before"). Thus, where third parties seek to bootstrap pending disputes with a party to the merger into the merger proceeding itself, they bear

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263 See, e.g., Applications of Qwest Communications International, Inc. and U S West, Inc. to Transfer Control, CC Docket No. 99-272, Memorandum Opinion and Order ¶ 28 (rel. March, 10, 2000) (FCC 00-91) ("Qwest/U S West Order"); Applications of Pacific Telesis Group and SBC Communications, Inc. for Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries, 12 FCC Rcd 2624, ¶ 38 (1997); Bell Atlantic/NYNEX Order ¶ 221, Applications of Turner Broadcasting System, Inc., 11 FCC Rcd 19595, ¶ 33 (1996); Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company Application for Transfer of Control of Eighty-two Cellular Radio Licenses to Cellco Partnership, 10 FCC Rcd 13368, ¶ 37 (1995) ("Bell Atlantic/NYNEX Mobile Order"); Applications of Craig O. McCaw and AT&T, 9 FCC Rcd 5836, ¶ 123 (1994), aff'd sub nom, SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995).

the threshold burden of demonstrating that the dispute relates to the merger proposal. Commenters have failed to make that showing.

For example, the Texas OPUC argues that the Sprint local phone companies should be subjected to certain conditions currently proposed by GTE in the context of the Bell Atlantic/GTE proceeding, including performance measures, expedited alternative dispute resolution procedures, and multi-state agreement requirements. See Texas OPUC at 5-6. In the context of large ILEC mergers, supplemental market-opening conditions have been deemed appropriate because the merger of two large ILECs has been found by the FCC to make discrimination more likely. SBC/Ameritech Order ¶¶ 429-435. But the Texas OPUC does not attempt to show -- nor could it show -- that this merger somehow impedes Sprint's ILECs' progress in opening their local markets. No commenter in this proceeding has suggested at all that the Sprint ILECs have done anything other than diligently pursue their obligations under the 1996 Act. Indeed, Sprint ILECs have often served as positive benchmarks for assessing other ILECs' performance because Sprint Corporation has both incumbent and competitive interests. With the merger with MCI WorldCom, the competitive interests of the combined company will ensure this positive benchmark continues.

Most recently, in the Commission's decision approving the Qwest/U S West merger subject to conditions, the Commission stated that "the merged entity will have an increased incentive to discriminate against competitive LECs currently competing in or entering the U S West region and against competing interexchange carriers." Qwest/U S West Order ¶ 42 (emphasis omitted). The Commission nevertheless concluded that such concerns did not warrant further action in light of existing safeguards. Id. ¶¶ 42-44. Safeguards are in place with regard to

Sprint's ILEC operations and these safeguards ameliorate any similar concern that might be raised as to the merger of MCI WorldCom and Sprint.

Independent ILECs offering interexchange service are treated as nondominant carriers so long as those services are offered through a separate affiliate that has separate books of account, that does not jointly own switching and transmission facilities with the local exchange affiliate, that acquires services from the local exchange affiliate at tariffed rates, terms and conditions, and that complies with other existing rules (e.g., Part 64 cost allocation rules).[264] The Commission adopted these requirements specifically to address concerns that ILEC control over local exchange and exchange access facilities could create the incentives at issue in the Qwest/U S West Order. See LEC Interexchange Services Order ¶ 163. The Commission specifically declined to adopt more stringent rules, such as those provided in Section 272, because independent LECs differ from RBOCs in certain important respects and are therefore "less likely to be able to engage in anticompetitive conduct than the BOCs." Id. ¶ 170. Independent LECs are more geographically dispersed, generally serve areas that are rural or otherwise less densely populated, and on average have relatively little interexchange traffic that both originates and terminates in their service areas. Id. The Commission has in fact found a number of recent mergers among independent LECs and IXCs to be in the public interest, and these findings should hold here as well.[265]

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264 See LEC Interexchange Services Order ¶¶ 143-144. Interexchange affiliates may also purchase services from the local exchange affiliate on the same basis as requesting carriers that have negotiated interconnection agreements pursuant to Section 251. Id. ¶¶ 163, 164.

265 See, e.g., Global Crossing Ltd. and Frontier Corp. Applications for Transfer of Control, 14 FCC Rcd 15911 (1999); Public Notice, "Wireless Telecommunications Bureau, Common Carrier Bureau and International Bureau Grant Consent for Transfer of Control

Similarly, two CLECs complain that Sprint's long distance operations are wrongfully refusing to pay them access charges above levels charged by the relevant ILEC in the respective areas. See MGC at 1; NextLink at 13-16. They contrast this position by Sprint with that of MCI WorldCom, since the latter has paid these access charges.[266] But again, these disputes have no bearing on the public interest inquiry of the merger. Indeed, to the extent the merger can be said to have a predictable effect, it will tend to alleviate these parties' concerns since MCI WorldCom is the acquiring party and its policies will dictate those of the combined firm. In any event, MGC has initiated a pending complaint and NextLink has threatened to do so as well; they should be directed to pursue those rather than try to replicate those proceedings here.

On numerous occasions, the Commission has also reminded parties that merger proceedings should not serve to disrupt pending rulemakings or other proceedings. See SBC/Ameritech Order ¶ 525 (rejecting relevance of paging interconnection issues since "[t]his matter is the subject of a separate proceeding at the Commission"); Bell Atlantic/NYNEX Order ¶¶ 219-221 (declining to address disputes over billing and collection practices and PIC changes in light of pending petitions on these matters); SBC/SNET Order ¶ 29 (refusing to consider CPP billing and collection dispute "because the public interest would be better served by addressing the matter in the broader proceeding of general applicability"); Bell Atlantic/NYNEX Mobile Order ¶ 37 ("the proper forum for specific complaints against common carriers is a Section 208

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of Licenses of IXC Communications, Inc. to Cincinnati Bell, Inc." (rel. Oct. 26, 1999) (FCC 99-2300).

266 MCI WorldCom nevertheless reserves the right to challenge CLEC access charges that it believes are unreasonable. If negotiations with the CLEC do not resolve an issue to MCI WorldCom's satisfaction, MCI WorldCom may block traffic from that CLEC's network, or MCI WorldCom may choose to file a Section 208 complaint with the FCC.

complaint proceeding, not a license assignment/transfer of control proceeding."). Thus, complaints lodged here regarding slamming,[267] or the assessment of minimum fees for long distance customers[268] are being directly addressed in other Commission proceedings, and need not and should not be considered in this license transfer proceeding. This is especially so in light of the fact that these commenters have not demonstrated that the transaction in any way alters these perceived problems.

B. Compliance With The WorldCom/MCI Order

Rainbow/PUSH and others argue that this merger should be delayed until MCI WorldCom's compliance with its 1998 merger approval can be ascertained. See, e.g., Rainbow/PUSH at 4-12; Inner City Press at 4; Public Utility Law Project at 12-13. In the WorldCom/MCI Order, the merger parties committed not to abandon their service commitments to residential customers. They further assured that the combined company would work hard, consistent with sound financial decisionmaking, to extend new services to residential users, including entry by UNE-P and the deployment of city fiber to urban consumers in multiple dwelling units on a targeted basis. WorldCom/MCI Order ¶ 191. Rainbow/PUSH argues that the

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267 National Consumers League at 3-4.

268 See, e.g., TURN at 8-9; Rainbow/PUSH at 17-18 (expressing concern for low volume users facing minimum fees). Rainbow/PUSH also express concern for immigrant and minority consumers who, because of familial and business ties outside the U.S., place a "disproportionate amount" of international long distance calls relative to other consumers. The FCC's Millennium Report (at 4) expressly notes that, as is the case with domestic long distance, international long distance prices have fallen dramatically in recent years, with consumers having many choices among suppliers.

Commission should require a supplemental filing by MCI WorldCom to demonstrate that these commitments have been met.[269]

On November 5, 1999, MCI WorldCom submitted information to the Chief, Common Carrier Bureau reporting its progress in furthering its commitments to serve residential customers, for both long distance services as well as local exchange services. As described more fully in that letter (attached as Exhibit 7), MCI WorldCom has actively pursued the residential markets, as evident in the increase in both its local and long distance mass market customer base. MCI WorldCom has aggressively marketed local service to customers in New York, for example, where the New York Public Service Commission has required commercially viable UNE-P terms and conditions. There, MCI WorldCom has been able to offer consumers significant savings -- up to 18% relative to Bell Atlantic rates. MCI WorldCom is working diligently in various state proceedings throughout the country to establish local entry terms and conditions, including UNE-P and OSS, that will permit further expansion of its local service marketing efforts. See Exhibit 7 at 3.

As the Commission has previously recognized, it is in the company's economic interests to continue to pursue these goals. WorldCom/MCI Order ¶ 192 ("There is no reason to predict . . . that the merged entity will have any lesser incentive to pursue rational, profitable strategic opportunities [for local entry]."). The pending merger here is best evidence of this fact: the merger parties have demonstrated that the new firm will actively compete for mass market

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269 To the extent Rainbow/PUSH has once again implied that MCI WorldCom's rollout is based on decisions other than sound economic decisions and somehow the product of discrimination against low income consumers and minorities, MCI WorldCom absolutely denies these baseless implications. The Commission rejected these claims in 1998 because they lacked any substantiation and should do so here as well.

customers for traditional long distance, local exchange, wireless narrowband (PCS and paging), and wireline and wireless broadband (MMDS) services, as well as packages of these services. There is simply no cause for requiring further supplements on this point.

C. State Matters

Other commenters seek to inject into this proceeding claims traditionally and appropriately left for state regulators. Even if these claims were somehow related to the merger itself (which they are not), they should be addressed (if at all) to the relevant state agencies. The Texas OPUC and others, for example, raise an issue with respect to the merger parties' compliance with a Texas state law regarding infrastructure requirements. Plainly, questions regarding compliance with state law belong before the appropriate state forum designated by that state to address such issues -- not in federal license transfer proceedings. CWA also attempts to malign Sprint ILECs' quality of service to local customers. The Commission has traditionally ruled that these matters are far more appropriately directed to state regulators. See, e.g., Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776, ¶¶ 99-101 (1997) (rejecting CWA's proposal that the Commission establish federal reporting requirements due to the fact that these requirements would duplicate state efforts already underway). While the Applicants do not believe these issues bear at all upon this proceeding, the misleading nature of CWA's claims regarding Sprint's local service prompts a corrective response to ensure an accurate record here.

The basis of CWA's claims lies in a highly selective and in any event mistaken use of the FCC's ARMIS. CWA selects only four of Sprint's 21 local operating companies in only four categories (out of a total of several dozen reported) over three years to claim a deterioration in service. Looking at the Sprint ILECs as a complete group and the categories as a whole, it becomes clear that in most categories, Sprint ILEC performance has remained consistent between

1996 and 1998. In fact, FCC reports establish that Sprint's ILECs' performance has been sustained at levels that either exceed or at minimum match industry performance. In several categories for 1998 (the latest available year), Sprint's ILECs were "first (or second)-in-class" -- including in the "repeat troubles" reports category cited by CWA. See Quality of Service of the Local Operating Companies Aggregated to the Holding Company Level, 1996-1998, Table 3(a) (Industry Analysis Division, CCB). Further, the claimed deterioration is misleadingly exaggerated by the fact that CWA has either failed to disclose or failed to recognize that the 1996 data for the Sprint-Florida ILECs were reported separately, thereby giving an apples-to-oranges comparison and overstating the percentage increase of problems in all four of its categories by 200-500%.

CWA also contrives an "excess dividend" analysis that wrongly portrays Sprint as financing non-telephone operations from its local businesses. While CWA acknowledges that it is "sound business practice to use internal resources from mature lines of business to finance expansion and growth," it argues that the issue is "one of degree." CWA at 49 n.116. But CWA has vastly overstated the "degree." CWA's own estimate of a "fair share" dividend, CWA at Appendix E, would yield a far higher equity/debt ratio than sound business practices would counsel, virtually eliminating debt in a few short years. Further, CWA's dividend payout ratios are calculated on ARMIS earnings, rather than the more appropriate GAAP earnings data. The net effect is to greatly overstate the level of dividends actually paid relative to capital expenditures. Sprint's dividend policy is consistent with its commitment to advanced infrastructure deployment and quality service. Sprint takes pride in the excellent quality of service it offers to its local

customers, and there is no basis for suggesting that this quality will somehow be negatively affected by the merger.[270]

D. Employment Issues

CWA also claims that the Commission should stretch its public interest inquiry to the merger's potential effects on employment. Just as the Commission rejected these claims in the MCI WorldCom merger proceeding, it should reject them here as well. CWA claims that MCI WorldCom cut the number of employees after its 1998 merger.[271] This is simply not true. In fact, from September 1998 to September 1999, there has been an increase of 8.7% in the number of MCI WorldCom employees. This number reflects adjustments for the acquisition of SkyTel and MMDS companies, as well as the sale of SHL Systemhouse to EDS, CWA's arguments notwithstanding. The correct figures follow:

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270 CWA also claims that its imagined diminution of Sprint's local operations services results from current employment practices, and argues that the merger will effectuate a reduction in headcount in Sprint LTD that will further degrade Sprint's local service. While the feared synergies do not in fact predict an overall decrease in employment, see Section VI.D. supra, the Application in any event establishes that none of the projected savings come from any aspect (including employment) of Sprint's ILEC operations. See Rehberger/Grothe Aff. ¶ 17. To the contrary, Sprint LTD has increased its investment in LTD operations even since the merger was announced, including a new call center to handle calls from local residential customers served by Sprint LTD. The new call center will require the addition of approximately 250 employees. See News Release, "Sprint Adding New Call Center to Support Growth of Local Communications Business" at 2 (Dec. 14, 1999) <www3.sprint.com/Stemp/press/releases/199912/199912140899.html>.

271 TRAC makes the same claim based upon CWA's inaccurate calculations. TRAC at 11-12.

Year	Total Employees	Adjusted Number of Employees (Basis for Adjustment)	
Sept 1998	81,619	72,419	(subtract 9,200 SHL employees later transferred to EDS)
Sept 1999	83,263	78,763	(subtract 4,500 employees gained through acquisition of SkyTel and MMDS companies)
	NET GAIN	6,344	

This "apples-to-apples" comparison yields a 12-month year increase of 6,344 employees, an 8.7% gain.

Moreover, there is every reason to believe this trend will continue. The CEOs of both companies have publicly stated that the new WorldCom will need to add 8,000 employees per year to achieve its revenue growth target.[272] It is simply good business to keep and recruit good employees, and to increase the workforce as needed to maintain and improve service as sales grow.

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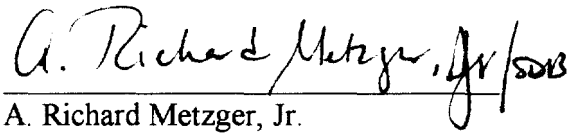
272 See Kansas City Star, Bernard J. Ebbers & William T. Esrey, "As We See It" at B6 (Jan. 27, 2000).

CONCLUSION

The record plainly establishes that the public interest will be served by the proposed merger. The Applicants respectfully urge the Commission to promptly grant the Application.

Respectfully submitted,



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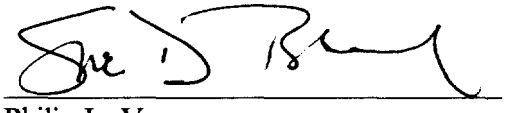

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